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In The
Supreme Court of the United States

KELLY AYOTTE, ATTORNEY GENERAL
OF NEW HAMPSHIRE,
IN HER OFFICIAL CAPACITY,

Petitioner,

v.

PLANNED PARENTHOOD OF NORTHERN NEW
ENGLAND, CONCORD FEMINIST HEALTH CENTER,
FEMINIST HEALTH CENTER OF PORTSMOUTH,
AND WAYNE GOLDNER, M.D.,

Respondents.

**On Writ Of Certiorari To The
United States Court Of Appeals
For The First Circuit**

BRIEF OF UNIVERSITY FACULTY FOR LIFE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

University Faculty for Life is an international group of faculty in various disciplines who respect the value of human life from its inception to natural death. Since its founding in 1989, the organization has promoted multi-disciplinary dialogue and collaboration among university faculty on abortion, infanticide, and euthanasia. *Amicus* provides this brief in hopes of assisting the Court in understanding the international law regarding parental involvement in a minor's decision to obtain an abortion.

SUMMARY OF ARGUMENT

American law has consistently recognized the relationship between strong families and the formation of civic virtues necessary to maintain a democratic republic. The present case presents the issue of parental involvement in circumstances raising some of the most profound questions both the individual and the community encounter. Unlike other questions, for which a strong consensus exists, resort to international law regarding abortion provides little guidance for this Court. To the extent such guidance does exist, it supports the right of parents to be involved in the care and treatment of their daughters, and thus supports the petitioner in this case.

[1] No counsel for any party authored any portion of this brief. No persons other than *amicus curiae*, their members, or their counsel have made a monetary contribution to the preparation and submission of this brief. The written consents of the parties will be filed with the Clerk of the Court pursuant to Supreme Court Rule 37.3.

ARGUMENT

I. THE UNIQUE AND WELL ESTABLISHED POLICIES OF THE UNITED STATES PERTAINING TO BOTH THE FAMILY AND ABORTION DISCOURAGE THE APPLICATION OF INTERNATIONAL LAW IN THIS CASE.

A. The United States has a longstanding tradition of promoting and protecting the rights and obligations of parents to direct the care, nurture, and upbringing of their children, even within the context of abortion.

The United States has consistently taken the position that parents are primarily responsible to guide, support, and direct their minor children. The Fourteenth Amendment "protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 66 (2000). This fundamental liberty interest is one of the oldest interests protected by American law,[2] and this Court's repeated affirmations have firmly established it as having constitutional

[2] *See, e.g., Meyer v. Nebraska*, 262 U.S. 390 (1923) (holding that a State law prohibiting the teaching of foreign languages in public schools unconstitutionally infringes upon the liberty interests of parents and teachers); *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925) (finding the State may not abrogate parents' rights to direct their children's education) ("[Parents] have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations."); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) ("It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.").

magnitude.[3] Within this right is the right of a parent to direct the medical care of a minor child:

> Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course; our constitutional system long ago rejected any notion that a child is "the mere creature of the State" and, on the contrary, asserted that parents generally "have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations." Surely, this includes a "high duty" to recognize symptoms of illness and to seek and follow medical advice. The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More important, historically it has

[3] *See, e.g., H.L. v. Matheson*, 450 U.S. 398, 410 (1981) ("[C]onstitutional interpretation has consistently recognized that the parents' claim to authority . . . to direct the rearing of their children is basic in the structure of society."); *Parham v. J.R.*, 442 U.S. 584, 602 (1979) ("Our jurisprudence historically has reflected . . . broad parental authority over minor children. Our cases have consistently followed that course."); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected."); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents . . . is now established beyond debate as an enduring American tradition."); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) ("It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children comes to this Court with a momentum for respect . . . ").

> recognized that natural bonds of affection lead parents to act in the best interests of their children.

Parham v. J.R., 442 U.S. 584, 602 (1979).

The mere fact that a small number of parents may act against the best interests of their children "is hardly a reason to discard wholesale those pages of human experience that teach that parents generally do act in the child's best interests. The statist notion that governmental power should supersede parental authority in *all* cases because *some* parents abuse and neglect children is repugnant to American tradition." *Id.* at 602-03 (1979) (citations and quotations omitted). Although "immature minors often lack the ability to make fully informed choices," their "parents possess what [they] lack in maturity, experience, and capacity for judgment." *H.L. v. Matheson*, 450 U.S. 398, 409 (1981); *Parham v. J.R.*, 442 U.S. 584, 602 (1979). In short, it is presumed that parents act in the best interests of their children and with superior discernment. Consequently, American law has always recognized parents' primary authority over their children's medical care.

Laws requiring parental involvement prior to the performance of an abortion on a minor are merely a limited application of this general rule to a specific procedure. This Court has upheld both parental notification and consent ("parental involvement") requirements for minors seeking abortions. *See, e.g., Lambert v. Wicklund*, 520 U.S. 292 (1997) (upholding a Montana law requiring parental notification for minors seeking abortions); *Planned Parenthood v. Casey*, 505 U.S. 833, 899 (1992) ("Our cases establish, and we reaffirm today, that a State may require a minor seeking an abortion to obtain the consent of a parent or guardian,"); *Hodgson v. Minnesota*, 497 U.S. 417

(1990) (upholding a Minnesota law requiring parental notification and a forty-eight hour waiting period for minors seeking abortions); *H.L. v. Matheson*, 450 U.S. 398, 413 (1981) (noting that the mere requirement of parental notification for minors seeking abortions is constitutional, even though it may impose a burden on some minors). "Although children generally are protected by the same constitutional guarantees against governmental deprivations as are adults, the State is entitled to adjust its legal system to account for children's vulnerability and their needs for 'concern, . . . sympathy, and . . . paternal attention.'" *Bellotti v. Baird*, 443 U.S. 622, 635 (1979) (quoting *McKeiver v. Pennsylvania*, 403 U.S. 528, 550 (1971)). As applied to minors, parental involvement laws further "the important considerations of family integrity and protecting adolescents . . . identified in *Bellotti II*." *H.L. v. Matheson*, 450 U.S. 398, 411 (1981).

As Justice Stevens has observed, this Court "has never challenged a State's reasonable judgment that [a minor's abortion] decision should be made after notification to and consultation with a parent." *Hodgson v. Minnesota*, 497 U.S. 417, 445 (1990) (Stevens, J. concurring). The lower courts erroneously held the New Hampshire parental notification law unconstitutional, which is identical in pertinent part to the Minnesota law upheld by this Court in *Hodgson v. Minnesota*.

B. The United States has repeatedly rebuffed international attempts to interfere with its unique approach to the abortion issue.

The United States has always preserved its sovereignty over family law, specifically concerning regulation

of reproductive rights. For example, the United States has never ratified the United Nations Convention on the Rights of the Child ("CRC"),[4] largely due to the credible belief that it would subvert the authority of parents to exercise important responsibilities towards their children by conferring upon children freedom from parental restraint in all areas of their lives.[5] The United States has ratified two of the CRC's optional protocols, expressly stating in each instance that ratification of the protocol did not in any way imply ratification of the CRC itself.[6]

[4] U.N. Doc. A/44/49, *reprinted at* 28 I.L.M. 1448 (1989) [hereinafter CRC].

[5] The CRC attempted to create a legally-binding international standard of children's rights. *See* UNICEF, The Convention, at http://www.unicef.org/crc/crc.htm (last visited July 13, 2005). The UN General Assembly unanimously approved the CRC on November 20, 1989. *See* CRC, 28 I.L.M. at 1448. The CRC has never been forwarded to the Senate for ratification due to intense objection from the American people over its interference with parents' rights. *See* 141 Cong. Rec. S3081-02, 1995 WL 74816 (1995) (statement of Sen. Dole) ("I have received thousands of calls from all over the country in opposition to [the CRC]. My office has not received one call for it. . . . Could [the CRC] be interpreted to limit the ability of parents to decide for themselves how best to raise their children?"); S. Res. 133, 104th Cong., 1995 WL 356610 (1995) ("Resolved, That it is the sense of the Senate that – (1) the [CRC] is incompatible with the God-given right and responsibility of parents to raise their children . . . 4) the President should not sign and transmit to the Senate that fundamentally flawed Convention."). To date, the United States has not ratified the CRC. *See* UNICEF, FAQ, at http://www.unicef.org/crc/crc.htm.

[6] *See* 148 Cong. Rec. S5716-04, 2002 WL 1332170 (2002) ("The United States understands that the United States assumes no obligations under the [CRC] by becoming a party to the Protocol [on Involvement of Children in Armed Conflict]."); 148 Cong. Rec. S5717-01, 2002 WL 1332171 (2002) ("The United States understands that the United States assumes no obligations under the [CRC] by becoming a party to the Protocol [on the Sale of Children, Child Prostitution and Child Pornography].").

Notwithstanding the fact that the United States is an international leader in efforts to eliminate gender bias,[7] the United States has never ratified the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"),[8] clearly indicating intent to retain national control over family planning and reproductive services.[9] In September 1995, the UN unanimously adopted the Beijing Declaration and Platform for Action ("Beijing Declaration"),[10] which establishes an international standard of women's rights, including reproductive

[7] *See* U.S. Department of State, Office of International Women's Issues, at http://www.state.gov/g/wi/ (last visited July 29, 2005) ("The United States is in the forefront of advancing women's causes around the world, helping them become full participants in their societies through various initiatives and programs that help increase women's political participation and economic opportunities and support women and girls' access to education and health care.").

[8] U.N. Doc. A/52/38, *reprinted at* 19 I.L.M. 33 (1980) [hereinafter CEDAW]. CEDAW requires broad regulation of private conduct, especially within the family. *See id.* at 36-37 (articles 2-3, 5). In 1994, the Senate Foreign Relations Committee recommended ratification of the treaty subject to certain reservations, including that the United States would retain national sovereignty over regulation of private conduct. *See* 140 Cong. Rec. S13927-04, 1994 WL 543936 (1994). The Senate never took action on that recommendation. *See Contemporary Practice of the United States Relating to International Law* (Sean D. Murphy ed.), 96 A.J.I.L. 956, 972 (2002). Since then, the United States has not ratified CEDAW.

[9] *See* 140 Cong. Rec. S13927-04, 1994 WL 543936 (1994) ("The Senate's advice and consent is subject to the following understandings: . . . that Article 12 permits State Parties to determine which health care services are appropriate in connection with family planning, pregnancy . . . ").

[10] United Nations Fourth World Conference on Women: Declaration and Platform for Action, A/Conf.177/20 (1995) & A/Conf.177/20/Add.1, *reprinted at* 35 I.L.M. 401 (1996) [hereinafter Beijing Declaration].

rights.[11] Again, the United States reserved national sovereignty over abortion law, and in March 2005, the United States reaffirmed its previous qualified support, provided the Declaration is not construed to create international abortion rights.[12]

In sum, the United States has successfully resisted international efforts seeking to replace America's long-standing recognition of family and parental authority with the present-day experiment in some foreign nations with radical individualism. *Cf. Moore v. City of East Cleveland*, 431 U.S. 494, 503-04 (1977) (plurality) ("It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural."). In light of the consistent rejection of attempts to globalize the issues of family law by the legislative and executive branch, and the divisive history of contemporary abortion jurisprudence in this country, international law is ill-suited to assist this Court in addressing the issues presented by this case.

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[11] *See* Beijing Declaration, A/Conf.177/20 (1995) & A/Conf.177/20/Add.1, ch. IV, § C, ¶¶. 94-97, 106, *reprinted in* 35 I.L.M. at 423-26.

[12] *See* U.S. Department of State, *U.S. Explanation of Position on the Declaration* (Mar. 22, 2005), at http://www.state.gov/p/io/uncnf/43759.htm ("We have stated clearly and on many occasions . . . that we do not recognize abortion as a method of family planning, nor do we support abortion in our reproductive health assistance. The United States understands that there is international consensus that the terms "reproductive health services" and "reproductive rights" do not include abortion or constitute support, endorsement, or promotion of abortion or the use of abortifacients."). When the United States originally signed the Beijing Declaration, it submitted a written statement interpreting the Declaration as creating a general obligation to implement "the Platform's recommendations overall, rather than a specific commitment to implement each element of the Platform." Beijing Declaration, A/Conf.177/20 (1995) & A/Conf.177/20/Add.135, ch. V, ¶. 30, 35 I.L.M. at 480.

C. Past instances justifying reliance on international law by this Court materially differ from the present case.

This Court's past decisions in *Roper v. Simmons*, 125 S.Ct. 1183 (2005), and *Lawrence v. Texas*, 539 U.S. 558 (2003), have both relied upon international law. However, neither case is sufficiently analogous to justify the application of international law in the present case.

This case materially differs from *Roper* in that it lacks the benefit of an international consensus on the issue of abortion rights.[13] In fact, the abortion issue as a whole remains unsettled and controversial in the international

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[13] *Roper* repeatedly recognized the clear and overwhelming international consensus against the juvenile death penalty.

> Our determination that the death penalty is disproportionate punishment for offenders under 18 finds confirmation in the stark reality that *the United States is the only country in the world* that continues to give official sanction to the juvenile death penalty. . . . Article 37 of the United Nations Convention on the Rights of the Child, which *every country in the world* has ratified save for the United States and Somalia, contains an express prohibition on capital punishment for crimes committed by juveniles under 18. . . . *No ratifying country* has entered a reservation to the provision prohibiting the execution of juvenile offenders. Parallel prohibitions are contained in other significant international covenants. . . . In the 56 years that have passed since the United Kingdom abolished the juvenile death penalty, the weight of authority against it there, and in the international community, has become well established.

See id., 125 S.Ct. at 1198-1200 (citations omitted and emphasis added).

community.[14] The wide range of abortion restrictions among various countries has prevented international institutions from taking a position on the issue.[15] For example, neither the United Nations nor the European Union has enacted any legislation directly governing the abortion practices of member nations.[16] This phenomenon is largely attributable to the need to accommodate members – for example, Ireland, Malta, and Poland – that vehemently oppose the more permissive abortion laws of some of their neighbors.[17] This issue is so divisive that the

[14] *See* Elizabeth Bryant, *Abortion Foes Get More Vocal as EU Expands*, S.F. Chron., Mar. 29, 2005, at 1, at http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2005/03/29/MNGSNC03M21.DTL (noting the abortion controversy in the EU); Center for Reproductive Rights, *Abortion and the Law: Ten Years of Reform* (Feb. 2005), at http://www.reproductiverights.org/pdf/pub_bp_abortionlaws10.pdf (comparing liberalization of abortion laws in some countries with increasing restrictions in others). The United States is one of only fifty-four countries permitting abortion without restriction as to reason, while seventy-two countries either prohibit abortion completely or allow it only to save the mother's life. *See* Center for Reproductive Rights, The World's Abortion Laws (June 2004), at http://www.reproductiverights.org/pub_fac_abortion_laws.html.

[15] *See* Chad M. Gerson, *Toward an International Standard of Abortion Rights: Two Obstacles*, 5 Chi. J. Int'l L. 753, 753 ("For a variety of reasons, many international organizations have carefully avoided taking positions on positive abortion rights.").

[16] *See* Alicia Czerwinski, *Sex, Politics, and Religion: The Clash Between Poland and the European Union over Abortion*, 32 Denv. J. Int'l L. & Pol'y 653, 660 (2004) (noting that the EU lacks direct legislation legalizing abortion and instead defers to the legislation of its member states).

[17] Ireland, Malta, and Poland are all members of both the UN and the EU. *See* United Nations, List of Member States, at http://www.un.org/Overview/unmember.html (Feb. 24, 2005); European Union, European Union Member States, at http://europa.eu.int/abc/governments/index_en.htm (last visited July 13, 2005). Ireland permits abortion only to save the life of the mother. *See* Center for Reproductive

(Continued on following page)

European Parliament did not approve its own *Annual Report 2003 on Fundamental Rights in the European Union* because of a dispute over certain paragraphs encouraging the member nations to liberalize their abortion laws.[18]

Lawrence's rationale likewise fails to support the use of international law in this case. While *Lawrence* involved government interference in the private sexual conduct of two consenting adults,[19] the present case focuses on the right of a minor to make a secret decision to obtain an

Rights, The World's Abortion Laws (June 2004), at http://www.reproductiverights.org/pub_fac_abortion_laws.html. The country has acted to ensure that its abortion laws will never be affected by EU legislation. *See* Protocol No. 17 annexed to the Maastricht Treaty and to the Treaties Establishing the European Communities, 31 I.L.M. 247, 362 (1992); *see also* Peta-Gaye Miller, 22 B.C. Int'l & Comp. L. Rev. 195, 206-07 (discussing Ireland's abortion laws in the context of the EU). In Malta, abortion is illegal. *See* Malta, Criminal Code, §§ 241-43A (2003), at http://cyber.law.harvard.edu/population/. When Malta became a member of the EU in 2004, it annexed a protocol to its accession treaty that allows it to maintain its current abortion law free from EU interference. *See* Protocol No. 7 annexed to the Treaty of Accession 2003 (Apr. 16, 2003), at http://europa.eu.int/comm/enlargement/negotiations/treaty_of_accession_2003/treaty_accession_24.htm. Article 38 of Poland's constitution prohibits abortion, although Poland has not yet sought a protocol insulating its abortion law from EU regulation. *See* Alicia Czerwinski, *Sex, Politics, and Religion: The Clash Between Poland and the European Union over Abortion*, 32 Denv. J. Int'l L. & Pol'y 653, 665 (2004).

[18] *See* Chad M. Gerson, *Toward an International Standard of Abortion Rights: Two Obstacles*, 5 Chi. J. Int'l L. 753, 759 (2005).

[19] *Lawrence v. Texas*, 539 U.S. 558, 578 (2003) ("The case does involve two adults who, with full and mutual consent from each other, engaged in sexual practices common to a homosexual lifestyle. The petitioners are entitled to respect for their private lives.").

abortion.[20] Furthermore, *Lawrence* relied upon decisions by the European Court of Human Rights to support its conclusion that precedent in the United States was "at odds" with Western civilization.[21] Here however, neither the European Court of Human Rights nor the European Court of Justice has authored opinions establishing a fundamental right to abortion or determining the validity of parental involvement laws. Thus, these significant discrepancies between the legal contexts of *Lawrence* and the present case render *Lawrence* inapplicable here.

In contrast to the conflicting state of abortion regulation in the international community, domestic law is settled. The United States has a valuable tradition of promoting the family and the primary authority of parents. Furthermore,

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[20] *Cf.* Beschlu□ des Bundersverfassungsgerichts vom. 28 Mai 1993 – 2BvF 2/90 (BGBI. I S 820) (Decision of the Second Senate, German Constitutional Court of May 28, 1993), *translation available at* http://www.hrcr.org/safrica/life/39bverfge1.html (*see* pt. II, § 2) ("[T]he termination of a pregnancy always means the destruction of unborn life. . . . [T]he decision must favor the protection of the fetus' life over the right of self-determination of the women. [The women] may be limited in some potential personal developments by pregnancy, birth, and childrearing [and her right to self-determination may thus be impaired]. The unborn life, however, gets destroyed by the termination of a pregnancy. Pursuant to the principle of the most careful balancing of competing constitutionally protected positions . . . the protection of the nasciterus's life must be granted priority. This priority principally lasts for the entire duration of the pregnancy . . . "); *Planned Parenthood v. Casey*, 505 U.S. 833, 846 (1992) (reaffirming *Roe's* essential holding that the state has a legitimate interest in protecting potential human life); *Lawrence v. Texas*, 539 U.S. 558, 578 (2003) ("The present case does not involve minors. . . . The Texas statute furthers no legitimate state interest which can justify its intrusion into the personal and private life of the individual.").

[21] *See Lawrence v. Texas*, 539 U.S. 558, 573, 576 (2003) (citing *Dudgeon v. United Kingdom*, 45 Eur. Ct. H.R. (1981), and subsequent decisions of the European Court of Human Rights).

the United States has resisted international efforts to alter American policies at the expense of the family. Reference to international law, which itself contains widely divergent regulatory regimes, would needlessly disrupt established American abortion law.[22]

II. EVEN IF INTERNATIONAL ABORTION LAW IS APPLIED, APPLICABLE STANDARDS ESTABLISH THAT RESPONDENTS HAVE NOT SUFFERED ANY INFRINGEMENT OF THEIR RIGHTS.

A. The only international organizations to have directly addressed abortion rights favor much greater restrictions than those contained in the New Hampshire statute.

Only two international organizations have promulgated substantive abortion policies. On November 22, 1969, the Organization of American States ("OAS"), which includes the United States,[23] adopted the American Convention on Human Rights ("ACHR").[24] Article 4 of the ACHR establishes legal protection for the right to life of the unborn child from the moment of conception, effectively discouraging abortion

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[22] *See Planned Parenthood v. Casey*, 505 U.S. 833, 843 (1992) ("Liberty finds no refuge in a jurisprudence of doubt.").

[23] *See* Organization of American States, Member States and Permanent Missions (Feb. 25, 2005), at http://www.oas.org/documents/eng/memberstates.asp ("All 35 independent countries of the Americas have ratified the OAS Charter and belong to the Organization. Cuba remains a member, but its government has been excluded from participation in the OAS since 1962.").

[24] O.A.S. Treaty Series No. 36 (Nov. 22, 1969), *reprinted at* 9 I.L.M. 673 (1970) [hereinafter ACHR].

at all stages of pregnancy.[25] To date, the United States and twenty-seven other member states, have signed the ACHR.[26] Also, the African Union ("AU") has established abortion rights in its Protocol on the Rights of Women in Africa.[27] However, the Protocol is quite limited in that it does not permit elective abortions nor does it create a minor's right to an abortion with or without parental involvement.[28]

The New Hampshire statute not only permits minors to obtain abortions but also allows them to do so without notifying their parents in certain circumstances. Also, the New Hampshire law is part of a broader regulatory scheme that is far more permissive than its international counterparts. Based on international standards, this

[25] *See* ACHR, O.A.S. Treaty Series No. 36, ch. II, art. 4, § 1 (Nov. 22, 1969), *reprinted at* 9 I.L.M. at 675.

[26] *See* Organization of American States, Signatures and Current Status of Ratifications, at http://www.cidh.oas.org/Basicos/basic4.htm (last visited July 28, 2005). President Carter transmitted the ACHR to the Senate on February 23, 1978. *See Four Treaties Pertaining to Human Rights*, 1966 U.S.T. LEXIS 521, *1-2 (containing President Carter's letter of transmittal to the Senate). For a summary of the ACHR's legislative history, see Treaty Number 95-21 available from the treaties database of the Thomas online legislative information website at http://thomas.loc.gov/home/treaties/treaties.htm (last visited July 29, 2005).

[27] *See* African Union, *Protocol on the Rights of Women in Africa*, art. 14, § 2 (July 11, 2003), at http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Protocol%20on%20the%20Rights%20of%20Women.pdf.

[28] *See* African Union, *Protocol on the Rights of Women in Africa*, art. 14, § 2, at http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Protocol%20on%20the%20Rights%20of%20Women.pdf.

statute does not infringe upon a minor's right to obtain an abortion.

B. Both the United Nations and the European Union have declined to articulate a position on the issue.

The United Nations' individual member states have always enjoyed sovereignty to promulgate abortion laws free from the interference or input of other members. In fact, no United Nations treaty has ever purported to institute international abortion regulations, nor has the United Nations taken an explicit position on the abortion rights of minors. Instead, in an attempt to effect a compromise among the wide range of abortion policies of the ratifying states,[29] international treaties contain only general references to health and reproductive rights and are rife with statements from signatories reserving national authority over abortion law.[30] As a result, the United

[29] Of the UN's one hundred ninety-two member states, seventy-two ban abortion completely or allow it only to save the mother's life. *See* Center for Reproductive Rights, The World's Abortion Laws (June 2004), at http://www.reproductiverights.org/pub_fac_abortion_laws.html. Fifty-five add some sort of health exception, and fourteen also permit abortion on socioeconomic grounds. *See id.* Fifty-four countries permit abortion at some stage of pregnancy without restriction as to reason. *See id.*

[30] In 1994, the UN addressed the topic of reproductive rights at the International Conference on Population and Development in Cairo, Egypt. *See* United Nations Report of the International Conference on Population and Development, U.N. Doc. A/CONF.171/13, tit. I, ch. VII, § B, ¶. 7.16 (Oct. 18, 1994), at http://www.un.org/popin/icpd/conference/offeng/poa.html [hereinafter Cairo Conference] ("All countries should take steps to meet the family-planning needs of their populations . . . and should . . . seek to provide universal access to a full range of safe and reliable family-planning methods and to related reproductive

(Continued on following page)

Nations provides no instructive guidance on abortion in general, and absolutely no pronouncements on parental involvement laws.

Like the United Nations, the European Union has failed to elicit any sort of consensus on abortion rights. Abortion legislation is not within its competency, but rather falls solely within the province of individual member

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health services *which are not against the law*.") (emphasis added). However, the Conference failed to reach any consensus regarding international abortion rights. *See id.*, tit. III, ch. V (listing the written reservations of sixteen countries, preserving national sovereignty over reproductive rights, and in some cases, asserting the right to life of unborn children from the moment of conception). One year later, the Beijing Declaration built upon the foundation provided by the Cairo Conference. *See* Beijing Declaration, A/Conf.177/20 (1995) & A/Conf.177/20/Add.1, *reprinted in* 35 I.L.M. 401 (1996). Again, various countries entered reservations similar to those at the Cairo Conference, and no consensus on abortion rights was reached. *See id.* at 472 (containing chapter V of the Beijing Declaration). Furthermore, the United States has since reiterated its understanding that the Beijing Declaration does not create abortion rights. *See* U.S. Department of State, *U.S. Explanation of Position on the Declaration* (Mar. 22, 2005), at http://www.state.gov/p/io/uncnf/43759.htm. Finally, the preamble to the CRC, which deals with children's rights, states that "the child . . . needs special safeguards and care, including appropriate legal protection, *before as well as after birth*." CRC, Preamble, 28 I.L.M. 1448, 1448 (1989) (emphasis added). This language has fueled the abortion controversy in the UN because some nations construed it as creating a right to life for the unborn while others expressly reserved the right to retain their liberal abortion laws. *See* Abby F. Janoff, *Rights of the Pregnant Child vs. Rights of the Unborn Under the Convention on the Rights of the Child*, 22 B.U. Int'l L.J. 163, 174-76 (2004) (discussing ratification of the CRC and reservations of various states concerning abortion laws); Office of the United Nations High Commission for Human Rights, Declarations and Reservations to the Convention on the Rights of the Child, at http://www.ohchr.org/english/countries/ratification/11.htm#reservations (last visited July 29, 2005) (listing the reservations and objections of CRC signatories).

states.[31] Currently, nine of the European Union's twenty-five members place some restrictions on abortion, including the recently admitted nations of Malta, Poland, and Cyprus.[32] With no direction on the issue from the European Parliament, the European Union's courts have done little to reconcile the conflicting views represented in the European Union's membership. In one anticipated decision, the European Court of Human Rights ruled in June of 2004 that Article 2 of the European Convention on Human Rights does not confer a right to life upon the fetus.[33] The court has also upheld the rights of health clinics in Ireland to encourage and assist pregnant women in traveling abroad for abortions, leaving intact the Irish prohibition of abortion in almost all cases.[34] For its part, the European Court of Justice has held that abortion is a service within the meaning of Article 60 of the Treaty Establishing the European Economic Community, thereby creating a right to disseminate information pertaining to abortion services.[35] Most significantly, all of these cases

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[31] Elizabeth Bryant, *Portuguese Parties Split on Abortion but Little Else*, Wash. Times, Feb. 19, 2005, at http://www.washtimes.com/upi-breaking/20050218-010804-3725r.htm.

[32] *See* UK Presidency of the EU, Enlargement of the EU at http://www.eu2005.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1109176230949 (listing the accession dates of the EU member states); Elizabeth Bryant, Abortion Foes Get More Vocal as EU Expands, S.F. Chron., Mar. 29, 2005, p. 1, at http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2005/03/29/MNGSNC03M21.DTL (last updated July 4, 2005) (discussing the abortion controversy in the EU).

[33] *See Vo v. France* (53924/00), 40 E.H.R.R. 12, 2004 WL 1808739 (Eur. Ct. H.R. 2004).

[34] *See Open Door Counseling Ltd. v. Ireland* (14234/88, 14253/88), 15 E.H.R.R. 244, 1992 WL 895454 (Eur. Ct. H.R. 1992).

[35] *See Society for the Protection of Unborn Children v. Grogan*, (C-159/90), 3 C.M.L.R. 849, 1991 WL 839064 (Eur. Ct. Just. 1991).

declined the invitation to issue a broad ruling on abortion rights in the European Union, and collectively, they demonstrate the European Union's unwillingness and inability to overrule the individual states' policies in the area.

The New Hampshire statute does not curtail any abortion rights guaranteed under current international standards. Furthermore, the United Nations and the European Union have declined to promulgate universal or regional abortion laws. Instead, both organizations have adopted a laissez faire approach to abortion regulation, recognizing member states' right to promulgate their own policies.

III. UNDER THE STANDARDS ESTABLISHED BY THE ABORTION LAWS OF INDIVIDUAL NATIONS, RESPONDENTS HAVE FAILED TO SUFFER ANY INJURY TO THEIR RIGHTS.

A. Foreign law supports the established right of parents to advise their children regarding an abortion decision.

As this Court has stated, "[P]arents and others ... who have [the] *primary responsibility for children's well-being* are entitled to the support of laws designed to aid discharge of that responsibility." *Ginsberg v. New York*, 390 U.S. 629, 639 (1968) (emphasis added). Counsel for *amicus curiae* surveyed abortion policies in one hundred ninety-three foreign countries in an attempt to identify a standard that may provide guidance on the propriety of such laws within the context of abortion regulation. Only fifteen countries worldwide – a scant eight percent – allow minors to access abortion services free from any safeguards

designed to ensure that the procedure is in the child's best interests.[36] By comparison, twenty-five require some form of parental involvement for minors seeking abortions,[37] and another twenty-two impose comparable restrictions on all abortion procedures.[38] The remaining one hundred thirty-one countries have enacted more restrictive abortion laws than those of the United States.[39]

As this Court has repeatedly recognized, the United States has always entrusted the care and nurture of children primarily to their parents, who are the people most able and likely to pursue the child's best interests. Pregnant minors need their parents' loving support and mature guidance to help them cope with the stress and difficulties of pregnancy.

B. Under foreign abortion laws, respondents have not alleged any cognizable injuries to their rights.

Ninety-two percent of countries surveyed have enacted abortion regulation that is similar to, or more restrictive than, the New Hampshire statute.[40] This fact

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[36] *See* Appendix A – Parental Involvement Laws in Permissive Countries, Comparison by Numbers.

[37] *See* Appendix A – Parental Involvement Laws in Permissive Countries, Countries with Involvement Laws.

[38] *See* Appendix B – Comparable Restrictions in Permissive Countries.

[39] *See* Appendix A – Parental Involvement Laws in Permissive Countries, Comparison by Numbers. A restrictive country is any country that does not permit abortion on demand or for socioeconomic reasons.

[40] *See* Appendix A – Parental Involvement Laws in Permissive Countries, Comparison by Numbers. Sixty-eight percent of countries

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alone suggests the statute generally comports with foreign standards. Analysis proves that under foreign abortion law, respondents have not suffered any injuries to their legal rights.

First and foremost, the absence of an explicit health exception and a broad death exception does not constitute a violation of rights.[41] In fact, the majority of countries with parental involvement laws have not expressly incorporated any emergency health or death exception and instead, must rely on other legal provisions to protect minors seeking abortions.[42] Of the eleven countries that have incorporated an explicit emergency exception, four of them use language comparable to that of the New Hampshire statute.[43] Only seven countries – a mere four percent of foreign nations – require a more lenient emergency exception than that contained in the New Hampshire

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prohibit all women, including minors, from obtaining abortions for socioeconomic reasons or on demand. Another twenty-four percent have parental involvement laws or other comparable restrictions that affect minors in a manner similar to, or more restrictive than, the New Hampshire statute.

[41] The First Circuit determined the statute's lack of an explicit health exception renders it unconstitutional and also that the statute's death exception contains too narrow of a time requirement and impermissibly fails to safeguard a physician's good-faith medical judgments. *See Planned Parenthood of Northern New England v. Heed*, 390 F.3d 53, 62, 64 (1st Cir. 2004).

[42] *See* Appendix A – Parental Involvement Laws in Permissive Countries, Countries with Involvement Laws.

[43] *See* Appendix A – Parental Involvement Laws in Permissive Countries, Countries with Involvement Laws (listing countries with "Strict" emergency exception standards). Also, *see* Appendix C for the statutory language of the emergency exceptions contained in the parental involvement laws of the eleven countries that have provided explicit emergency exceptions to their involvement laws.

statute.[44] Furthermore, only two percent of foreign nations have incorporated both judicial bypass and emergency exceptions in their parental involvement laws.[45] The absence of emergency exceptions and bypasses within foreign involvement laws is the norm. By foreign standards, respondents cannot attribute any injury to the New Hampshire statute because it provides both an emergency exception and a bypass.

Nor can respondents sustain a valid complaint concerning the substance of the statute's death exception. Although the Court of Appeals for the First Circuit found the exception to be inadequate,[46] if this Court were to apply it, foreign law would result in the reversal of the judgments of the lower courts. While language and other cultural barriers make word-for-word comparisons difficult,[47] the death exception's language falls generally within

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[44] *See* Appendix A – Parental Involvement Laws in Permissive Countries, Countries with Involvement Laws (listing countries with "Intermed." or "Low" emergency exception standards).

[45] *See* Appendix A – Parental Involvement Laws in Permissive Countries, Comparison by Numbers.

[46] *See Planned Parenthood of Northern New England v. Heed*, 390 F.3d 53, 64 (1st Cir. 2004).

[47] *See Societe Nationale Industrielle Aerospatiale et al. v. U.S. Dist. Ct. for the Southern Dist. of Iowa*, 482 U.S. 522, 538 n.23 (1987) ("The great object of an international agreement is to define the common ground between sovereign nations. Given the gulfs of language, culture, and values that separate nations, it is essential in international agreements for the parties to make explicit their common ground on the most rudimentary of matters." (citations and quotations omitted); Sanchez, Gloria M., *A Paradigm Shift in Legal Education: Preparing Law Students for the Twenty-First Century: Teaching Foreign Law, Culture, and Legal Language of the Major U.S. American Trading Partners*, 34 San Diego L. Rev. 635, 645, 652 (1997) ("Culture and language are difficult to study. . . . [T]he nature and properties of culture and language, and their important role within the context of the

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the range of wording used in foreign countries' emergency exceptions.[48]

More importantly, like the New Hampshire death exception, none of these other exceptions safeguards a physician's good faith medical judgments.[49] These similarities confirm that the New Hampshire statute contains an adequate death exception, which under foreign standards, does not violate any of respondents' legal rights.

Finally, confidential judicial bypasses find no parallel in foreign law. Of the few countries that permit bypasses of parental involvement laws, none has enacted any sort of corresponding confidentiality requirement.[50] Of course, both the district court and the appeals court declined to determine the validity of the statute's confidentiality requirement.[51] This Court need not reach this issue either because respondents lack standing in this case.

Foreign law provides an additional basis for respecting the established rights of parents in the United States

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study of law, are difficult to conceptualize. The individual may unwittingly superimpose her cultural interpretation on the foreign legal system which will create problems because she failed to examine her cultural assumptions.").

[48] To read the statutory language of the foreign laws referred to in this paragraph, *see* Appendix C – Statutory Language of Emergency Exceptions.

[49] To read the statutory language of the foreign laws referred to in this paragraph, *see* Appendix C – Statutory Language of Emergency Exceptions.

[50] *See* Appendix A – Parental Involvement Laws in Permissive Countries, Countries with Involvement Laws.

[51] *See Planned Parenthood of Northern New England v. Heed*, 390 F.3d 53, 64 (1st Cir. 2004); *Planned Parenthood of Northern New England v. Heed*, 296 F.Supp. 2d 59, 67 (D.N.H. 2003).

to advise their children regarding the abortion decision. The New Hampshire statute seeks to protect this right by creating safeguards for minors seeking abortions. These safeguards are comparable to, or less restrictive than, those of ninety-two percent of foreign nations. In countries that have implemented parental involvement laws, the majority have not incorporated any bypass or emergency exception. Under the standards of foreign nations, respondents have suffered no judicially cognizable injury to their abortion rights.

CONCLUSION

For all of the foregoing reasons, *amicus* respectfully urges the Court to vacate the judgments of the lower courts and remand to the district court with instructions to dismiss the case for want of standing, or in the alternative to reverse the judgments of the lower courts.

Respectfully submitted,

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APPENDIX A

PARENTAL INVOLVEMENT LAWS IN PERMISSIVE COUNTRIES*

Summary of All Countries			
Albania	**Cuba**	N. Korea	*South Africa*
Armenia	**Czech Republic**	S. Korea	*St.Vincent-Grenadines*
Australia	**Denmark**	*Kyrgyzstan*	Sweden
Austria	**Estonia**	**Latvia**	*Switzerland*
Azerbaijan	Fiji	**Lithuania**	**Taiwan**
Bahrain	*Finland*	**Luxembourg**	*Tajikistan*
Barbados	*France*	**Macedonia**	*Tunisia*
Belarus	**Georgia**	**Mongolia**	**Turkey**
Belgium	**Greece**	Nepal	Turkmenistan
Belize	**Guinea-Bissau**	*Netherlands*	Ukraine
Bosnia Herzegovina	Hungary	**Norway**	*U.K. (except N. Ireland)*
Bulgaria	**Iceland**	Romania	Uzbekistan
Cambodia	**India**	Russian Federation	Vietnam
Cape Verde	**Italy**	**Slovakia**	**Yugoslavia**
China	Japan	**Slovenia**	*Zambia*
Croatia	**Kazakhstan**		

* For purposes of this brief, a permissive country is a country that permits abortion on socioeconomic grounds or on demand at some point during pregnancy.

- **The twenty-five countries in bold have parental involvement laws.**
- *The twenty-two italicized countries place comparable restrictions on all abortions. (See Appendix B).*
- The remaining fifteen countries have no safeguards for minors seeking abortions.

Countries with Involvement Laws

	Country	Bypass†	Confidential△	Emergency○	Standard◊	Sources∞
1	Estonia	No		No		1, 2
2	Georgia	No		No		2
3	Greece	No		No		2
4	India	No		No		2
5	Kazakhstan	No		No		1, 2
6	Latvia	No		No		1, 2
7	Lithuania	No		No		1, 2
8	Macedonia	No		No		1
9	Mongolia	No		No		1,2
10	Taiwan	No		No		1
11	Barbados	No		Yes	Strict	2
12	Bosnia Herzegovina	No		Yes	Strict	1
13	Croatia	No		Yes	Intermed	2
14	Cuba	No		Yes	Intermed	1, 2
15	Czech Republic	No		Yes	Strict	2
16	Guinea-Bissau	No		Yes	Low	1
17	Slovakia	No		Yes	Intermed	2
18	Turkey	No		Yes	Intermed	2
19	Denmark	Yes	No	No		2

20	Luxembourg	Yes	No	No		1, 2
21	Slovenia	Yes	No	No		1
22	Yugoslavia	Yes	No	No		1
23	Iceland	Yes	No	Yes	Low	2
24	Italy	Yes	No	Yes	Strict	2
25	Norway	Yes	No	Yes	Low	1

† Countries that have some sort of bypass, judicial or otherwise, to their laws will be noted by a "yes" in the "Bypass" column.

Δ For countries that have bypasses, the "Confidential" column indicates whether or not the particular bypass provision contains a confidentiality requirement.

○ For this brief, an emergency exception to a parental involvement law must be i) for the purpose of preserving the life or health (physical or mental) of the mother and ii) stated within, or incorporated by, the involvement provision itself. Countries that provide such an exception will be noted by a "yes" in the "Emergency" column.

◊ For countries that have emergency exceptions, the "Standard" column denotes the stringency of the criteria necessary to satisfy the exception. A designation of "Strict" indicates that the exception only applies when abortion is *necessary* to preserve the life of the mother or to prevent serious bodily injury. "Intermed" indicates abortion is allowed to alleviate any threat to the mother's life or health. "Low" indicates there simply must be some reason to perform the abortion without complying with the involvement requirement.

∞ Three sources provided the information used to create this table. They are listed below. The sources consulted for each country are noted by listing the corresponding footnote numbers in the "Sources" column.

[1] United Nations, Abortion Policies: A Global Review (2002), at http://www.un.org/esa/population/publications/abortion/profiles.htm

[2] Harvard Law School, Abortion Laws of the World (2004), at http://www.law.harvard.edu/programs/annual_review/

[3] Center for Reproductive Rights, Abortion and the Law: Ten Years of Reform (Feb. 2005), at http://www.reproductiverights.org/pdf/pub_bp_abortionlaws10.pdf

Comparison by Numbers

Category	Sub-category 1	Sub-category 2	No.	Percent**
Total Countries Surveyed			193	100%
Restrictive Countries			131	68%
Permissive Countries			62	32%
	With involvement laws		25	13%
		and no bypasses or emergency exceptions	10	5%
		and bypasses	7	4%
		and emergency exceptions	11	6%
		and both bypasses and emergency exceptions	3	2%
	With comparable restrictions		22	11%
	With no safeguards for minors		15	8%

** Percents are calculated to the nearest whole number.

App. 2

APPENDIX B

COMPARABLE RESTRICTIONS IN PERMISSIVE COUNTRIES*

	Country	Restrictions†	Sources®
1	Albania	Abortion for life or health reasons requires the approval of three physicians	1, 2
2	Armenia	Any abortion after 1st trimester must be authorized by a commission of local physicians	1
3	Australia	Requirements vary by jurisdiction	1, 2
4	Austria	Abortion after 1st trimester only permitted to avert a serious risk to life or health	2
5	Azerbaijan	Any abortion after the 1st trimester must be authorized by commission of local physicians	1
6	Bahrain	A physician must consult with a panel of physicians before performing an abortion	1, 2
7	Belgium	Abortion after 1st trimester only allowed if two physicians agree there is a grave danger to mother's life or health. Also, requires a one week waiting period with no explicit health or death exception and no bypass.	2
8	Belize	Abortion for health reasons must be authorized by two registered physicians	2
9	Bulgaria	Abortion after 1st trimester only permitted if medical commission determines woman's life is in danger	1, 2
10	Cambodia	Abortion after the 1st trimester is prohibited unless approved by a medical commission	1
11	Cape Verde	Abortion after 1st trimester only permitted to avert a serious risk to life or health	1
12	Finland	Any abortion for health reasons must be independently certified by two physicians	2
13	France	Abortion after 10th week only permitted where grave danger to woman's health is certified by two physicians	2
14	Kyrgyzstan	Abortion after 1st trimester must be authorized by commission of local physicians	1
15	Netherlands	Six day waiting period only waived where life is in danger	2
16	South Africa	Abortion requires approval of three independent physicians. No health exception after 20th week.	2
17	St.Vincent-Grenadines	Abortion must be approved by two medical practitioners	1
18	Switzerland	Abortion requires written approval of second physician except in emergencies.	1
19	Tajikistan	Abortion must be approved by two medical practitioners	1
20	Tunisia	Abortion after 1st trimester only permitted where two physicians agree there is danger to the mother's health	1
21	United Kingdom	The minor must be mature enough to understand all the issues involved and be unwilling to inform her parents	4
22	Zambia	All abortions require consent of three physicians. Exception only for danger of grave permanent injury.	2

* For purposes of this brief, a permissive country is a country that permits abortion on socioeconomic grounds or on demand at some point during pregnancy.

† This column is not a comprehensive list of each country's restrictions on abortions. It only lists restrictions that are comparable to parental involvement laws in the burden they place on all women, including minors, who wish to have an abortion.

∞ Four sources provided the information used to create this table. They are listed below. The sources consulted for each country are indicated by listing the corresponding footnote number in the "Sources" column.

[1] United Nations, Abortion Policies: A Global Review (2002), at http://www.un.org/esa/population/publications/abortion/profiles.htm

[2] Harvard Law School, Abortion Laws of the World (2004), at http://www.law.harvard.edu/programs/annual_review/

[3] Center for Reproductive Rights, Abortion and the Law: Ten Years of Reform (Feb. 2005), at http://www.reproductiverights.org/pdf/pub_bp_abortionlaws10.pdf

[4] See the House of Lords ruling in Gillick v. West Norfolk & Wisbech Area Health Authority, [1985] 3 W.L.R. 830, 1985 WL 311014 (H.L. 1985).

APPENDIX C

STATUTORY LANGUAGE OF EMERGENCY EXCEPTIONS

Country	Language	Source
Barbados	The abortion must be "immediately necessary to save the life of the pregnant woman or to prevent grave permanent injury to her physical or mental health." Medical Termination of Pregnancy Act (Act No. 4 of 1983), § 8(4).	2
Bosnia Herzegovina	A medical commission may consent to an abortion when it is medically established that it would otherwise be impossible to save the woman's life or prevent damage to her health.	1
Croatia	"[T]he abortion will be performed or completed . . . where immediate danger is present to the life or health of the pregnant woman." Law No. 1252-1978, Act Concerning the Medical Measures for Materialization of the Right to Freely Decide on the Birth of Children (Apr. 21, 1978), art. 25.	2
Cuba	The language of the Cuba health regulations pertaining to abortion is not available.	
Czech Republic	"[T]he consent of the legal representative is also necessary if an abortion on health grounds is performed on [a minor]." Notification of the Ministry of Health of the Czech Socialist Republic on the implementation of Law No. 66/1986 on abortion (Nov. 7, 1986), § 5.	2
Guinea-Bissau	In special circumstances, it is possible for the pregnant woman to receive an abortion without the necessary consent.	1
Iceland	The minor's "parents or a guardian shall participate in an [abortion] application with her unless special reasons oppose it. Law No. 25 of 1975 (May 27, 1975), ch. II, art. 13, § 3.	2
Italy	"Where the physician finds that termination is urgently required in view of a serious threat to the health of a woman under 18 years of age, he shall make out a certificate indicating the conditions justifying the termination of pregnancy, without requesting the consent of the persons exercising parental authority or the guardian and without applying to the magistrate." Law No. 194 on the social protection of motherhood and the voluntary termination of pregnancy (May 22, 1978), § 12.	2
Norway	For minors, "the person exercising parental authority or the guardian shall be given an opportunity to express his views, unless there are particular reasons to the contrary." Law No. 50 on the termination of pregnancy (June 13, 1975), as amended through Law No. 86 (June 16, 1989), § 4.	2
Slovakia	The parental consent requirement is waived "if [the minor's] life or health or the healthy development of the fetus are endangered . . . ." Law on abortion (Oct. 23, 1986), as amended through Law No. 419/1991, § 5.	2
Turkey	The parental consent requirement "may be waived if there could be danger to life or to a vital organ unless urgent action is taken." Law No. 2827 (May 24, 1983), Population Planning Law, § 6.	2

1 United Nations, Abortion Policies: A Global Review (2002), at http://www.un.org/esa/population/publications/abortion/profiles.htm
2 Harvard Law School, Abortion Laws of the World (2004), at http://www.law.harvard.edu/programs/annual_review/